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MAY 18 2007

OFFICE OF PETITIONS

In re Application of McKenzie	:	
Application No. 10/707,410	:	Decision on Petition
Filing Date: December 11, 2003	:	
Attorney Docket No. 04112	:	

This is a decision on the renewed petition filed January 10, 2007, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

A petition under 37 CFR 1.181 was filed on July 3, 2006.

A decision dismissing the petition was mailed November 14, 2006.

The decision dismissed the petition because, although petitioner provided a reply to a final Office action was timely filed on February 4, 2006, the reply was improper. Since a proper reply was not timely filed, the application was abandoned as a matter of law.

Petitioner has filed a RCE and request for reconsideration under 37 CFR 1.181. However, petitioner has still not shown a proper reply was timely filed in response to the final Office action mailed November 25, 2005.

The decision mailed November 14, 2006, included the following language,

Any renewed petition should be accompanied by a proper reply in the form of a Notice of Appeal, RCE, or continuation application. If petitioner fails to reply in the form of a Notice of Appeal (and fee), proper RCE, or continuation application, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application.

The way the words above were phrased has apparently resulted in a misunderstanding. The paragraph's poor phrasing was not intended to indicate a renewed petition, including only one of the three items listed, would be grantable.

The decision recommended petitioner file a petition under 37 CFR 1.137(b). The paragraph quoted above should have been placed *after* the recommendation. The paragraph should have

indicated any petition under 37 CFR 1.137(b) "should be accompanied by" one of the listed items.

Unless petitioner can demonstrate a proper reply was filed on February 4, 2006, petitioner may wish to file a petition under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (now filed in the form of a RCE), the required petition fee (\$750 for a small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

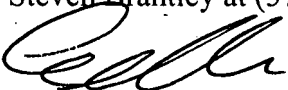
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